

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
CENTRAL DIVISION

FILED
APR 14 2008

Clerk

UNITED STATES OF AMERICA,

CR. 07-30114

Plaintiff,

-vs-

AUBREY J. TWO ELK,

Defendant.

REPORT AND RECOMMENDATION
ON DEFENDANT'S CHANGE OF PLEA
AND ORDER OF DETENTION

This matter came on before the Court for a change of plea hearing on Monday, April 14, 2008. Defendant, Aubrey J. Two Elk, appeared in person and by his counsel, Jana Miner, while Plaintiff, United States of America ("Government") appeared through Randolph J. Seiler, an Assistant United States Attorney.

Defendant consented in open court to the change of plea before the Court and his consent was knowingly and voluntarily made. The Government also consented to the Court taking Defendant's plea.

Defendant has reached a plea agreement with the Government wherein he intends to plead guilty to Counts II and III as contained in the Indictment. Defendant is charged in Count II of the Indictment with Assault Resulting in Serious Bodily Injury in violation of 18 U.S.C. §1153 and 113(a)(6). Defendant is charged in Count III of the Indictment with False Statement in violation of 18 U.S.C. §1001. At the hearing, Defendant was advised of the nature of the charges to which he would plead guilty and the maximum penalty applicable, specifically: Count II: Ten (10) years custody; \$250,000 fine, or both; three (3)

years supervised release; two (2) additional years imprisonment if supervised release is revoked; \$100 assessment; and restitution; Count III: Five (5) years custody; \$250,000 fine, or both; three (3) years supervised release; two (2) additional years imprisonment if supervised release is revoked; \$100 assessment; and restitution.

Upon questioning Defendant personally in open court, it is the finding of the Court that Defendant is fully competent and capable of entering an informed plea, that he is aware of the nature of the charged offenses and the consequences of the plea, and that his plea of guilty to the offenses contained in Counts II and III of the Indictment is a knowing and voluntary plea supported by an independent basis in fact containing each of the essential elements of the offense. It is, therefore, the Court's recommendation that the guilty plea to Counts II and III of the Indictment be accepted and that Defendant be adjudged guilty of that offense.

It is further ORDERED that Defendant shall remain detained pending sentencing or until further order of a judicial officer of this District as previously ordered.

NOTICE TO PARTIES

The parties have ten (10) days after service of this Report and Recommendation to file written objections pursuant to 28 U.S.C. §636(b)(1), unless an extension of time for good cause is obtained. Failure to file timely objections will result in the waiver of the right to appeal questions of fact. Objections must be timely and specific in order to require de novo review by the District Court.

Dated this 14th day of April, 2008, at Pierre, South Dakota.

BY THE COURT:

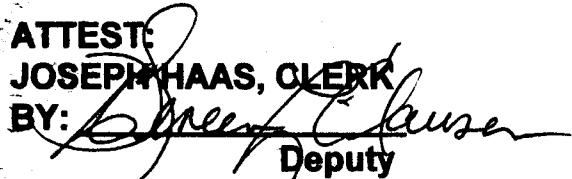


MARK A. MORENO
UNITED STATES MAGISTRATE JUDGE

ATTEST:

JOSEPH HAAS, CLERK

BY:


Deputy

(SEAL)